

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1674 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

NITIN S THAKORE

Versus

STATE OF GUJARAT

Appearance:

MR NK MAJMUDAR for Petitioner

MR VB GHARANIA, AGP for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 03/08/1999

ORAL JUDGEMENT

1. The petitioner ex-employee of the Health and Medical Services Department filed this petition under Article 226 of the Constitution and prays for quashing and setting aside the order dated 7.2.1997 Annexure-Q of the respondent No.3 under which his prayer for his voluntary retirement from the service was rejected. Second prayer has been made for the directions to the

respondents to give benefits of voluntary retirement to the petitioner w.e.f. 17.5.1989. Alternative prayer has been made to direct the respondents to allow the petitioner to resume his duties on the post of Social Worker in the office of the respondent No.4, the post which he was holding on 17.5.1989.

2. After filing of the Special Civil Application the petitioner filed proposed amendment. By this proposed amendment the petitioner prays for bringing on record subsequent events which has been taken place. Vide memorandum dated 10.5.1997 the petitioner was served with the chargesheet wherein it was mentioned that the petitioner has not resumed his duties from 18.5.1989 without any reasons and accordingly he has committed breach of the provisions of the Discipline & Appeals Rules, 1971. The petitioner by referring to this document insisted that now there remains nodoubt that he is in the service of the respondent No.4 and their action not to permit him to resume duties is arbitrary.

3. The petitioner was appointed as Social Worker in the office of the respondent No.4 vide order dated 6.2.1967 and as per his case he served to that department upto 17.5.1989 i.e. for 22 years and 3 months. As he has already completed 22 years of service, he was eligible to take voluntary retirement. The Director of Pension has also opined that the petitioner is eligible to get voluntary retirement. The petitioner vide its application dated 27.9.1988 made to the respondent No.2, as due to his personal reasons he is unable to continue in the service, accordingly requested to allow him to take voluntary retirement from 26.12.1988. It is a notice for voluntary retirement by the petitioner. Senior Medical Officer of the respondent No.4 wrote a letter to the Director of Pension and Provident Fund on 7.11.1988 forwarding necessary papers of the petitioner and further asked for whether the services of the petitioner are pensionable or not. The Director of Pension and Provident Fund informed the respondent No.4 vide its letter dated 6.12.1988 that since the petitioner has served for more than 20 years, is entitled for voluntary retirement from 26.12.1988. The respondent No.2 vide its letter dated 12.12.1988 informed the Medical Officer of the respondent No.4 that the proposal of the petitioner for voluntary retirement has not come within time, the same cannot be accepted, and therefore, the petitioner cannot be treated as relieved from service from 26.12.1988. It was further informed that fresh proposal of the petitioner for voluntary retirement may be sent. The petitioner continued on the post, but from

17.5.1989 he stopped to come to his duties. The petitioner vide his application to the respondent No.2 informed that he may be considered to have gone on voluntary retirement from 17.5.1989. He had also made reference to his previous application submitted by him for his voluntary retirement dated 27.9.1988. Vide letter dated 10.7.1990 addressed to the respondent No.2 the petitioner requested him to give him benefits of voluntary retirement which followed by subsequent reminder dated 5.12.1991. The respondent No.4 sent a letter dated 18.1.1992 to the respondent No.2 recommending the case of the petitioner for voluntary retirement w.e.f. 18.5.1989. It is necessary to mention here that the petitioner remained absent from his duties for a period from 1.1.1987 to 17.5.1988. The petitioner made reference to the letter of the Additional Director dated 27.8.1992 informing to the respondent No.4 that the aforesaid period of absence of the petitioner has been treated as unauthorised absent and accordingly it may be mentioned in the service record. The petitioner wrote a letter to the respondent for his retiral benefits on 26.6.1994. He was not given his retiral benefits. The petitioner wrote a letter to the respondent No.2 on 7.12.1994 that if it is not treated as relieved from service from 17.5.1989 then he has no option but to resume his duties. He further stated that he may be treated as to continue in the service. Another letter has been sent by the petitioner on 29.5.1995 and requested that the leave for the period from 1.1.1987 to 15.1.1988 may be treated for the purpose of pension. The respondent No.4 sent a letter dated 27.6.1995 to the respondent No.2 to do needful in the matter of voluntary retirement of the petitioner.

4. So far as leave is concerned the respondent No.3 vide its letter dated 1.5.1996 informed the petitioner that so far as his absence period between 1.1.1987 to 15.2.1988 is concerned, request for sanctioning leave for the said period is not granted. The petitioner on 17.6.1996 wrote a letter to the respondent reiterating the same request regarding sanction of leave. From the facts it is clear that the petitioner after May 1989 was not interested to continue in the service as he wanted to settle in America.

5. However, when nothing has been done in his case, the petitioner filed Special Civil Application No.4769/96 before this court. This petition came to be disposed of by the court under its order dated 30.10.1996 with the directions to the respondents to consider the petitioner's application dated 5.12.1991 for voluntary

retirement. This application came to be rejected under the order dated 7.2.1997 on the ground that for voluntary retirement the petitioner has to give three months notice and which was not given, on his own had relieved from the service from 17.5.1989 and since he has given the application for the purpose of voluntary retirement after retiring from service on his own after such a long time, the same cannot be accepted. Hence, this Special Civil Application before this court.

6. This Special Civil Application is opposed by the respondents. They filed reply to the same. On 18.7.1997 this court has declined to accept the prayer of the petitioner to permit him to join the duty as Social Worker. This court has held that the petitioner abandoned the services from 17.5.1989.

7. Heard learned counsel for the parties.

8. Rule 161 of the Bombay Civil Services Rules, 1959 hereinafter referred as "Rules of 1959" provides that any Government servant to whom clause (a) of sub-rule (1) applies may, by giving notice of not less than three months, in writing to the Appointing Authority, retire from service after he has attained the age of 50 years, if he is in Class-I or Class-II service or post or in any unclassified gazetted post, the age limit for the purpose of recruitment to which is below 35 years and in any other case, after he has attained the age of 55 years.

9. It is really a case where I constrain to observe that redtapism which is prevailing in bureaucrats in the State as well as careless and depending approach of the bureaucrats on the ministerial staff resulted in these two litigations before this court. Not only this, but how the things are taken by the officer of the department is clearly exhibited from this matter. An employee who remained absent for a long period from his duty against whom no action has been taken as if they are not aware of the state of affairs as prevailing in the department. Not only this, a simple matter which could have been decided in the case a practical and positive approach in the larger interest of the Government should have been taken by these bureaucrats in the State, whatever it may be reasons of the absent of the petitioner for a period from 1.1.1987 to 15.7.1988 still continues.

10. It is not in dispute that later the petitioner joined his duties and on 27.9.1988 he has given notice for his voluntary retirement. The petitioner has given clear notice of three months as required under Rule 161

(1)(ii) of the Rules, 1959. This application, it is not in dispute was submitted by the petitioner. But the respondent No.2 a high bureaucrat in the State instead of accepting it has taken technical approach in the matter and said that it cannot be accepted as the proposal for voluntary retirement of the petitioner has not given within time. This proposal has to be sent by the immediate officer and if some delay has been made by him, how far it is justifiable by the respondent No.2 to decline to accept the same. Because of this approach of this officer, if we go by the facts of this case, a heavy financial burden comes on the State exchequer. The petitioner's services were not terminated for his absence. Otherwise also, if an employee is not willing to serve the State, how far it is justified and more so how far it is correct to take such technical approach in the matter by high bureaucrat which result in manifold complications and may ultimately result in manifold benefits to the petitioner for which otherwise he would not have been entitled. Rule 161 of the Rules, 1959 authorises the Appointing Authority to withhold permission to retire voluntarily only in case where the Government servant is under suspension or against whom departmental proceedings are pending or contemplated.

11. It is not the case of the respondent that on 27.9.1988 or on 12.12.1988 the petitioner was under suspension or against him any departmental proceedings are pending or contemplated. I am constrained to observe that, if we go by the chargesheet now which has been served upon the petitioner vide memorandum dated 16.5.1997 during the pendency of this Special Civil Application, it does not pertain to the period of absence of the petitioner from 1.1.1987 to 15.7.1988. So none of the contingencies which could have justified the action of the respondent No.2 to withhold the request of the petitioner to go on voluntary retirement either from 27.9.1988 or 12.12.1988 are present in this case.

12. It is not out of the contest to state here that the Director of Pension and Provident Fund has opined that the petitioner's services are pensionable. It has further been opined that the petitioner is also eligible for voluntary retirement from 26.12.1988. So all the necessary conditions for voluntary retirement of the petitioner were there. Above that, he has also given three months notice, but the respondent No.2 has not sanctioned voluntary retirement of the petitioner. Reasons which have been given by the respondent No.2 for not sanctioning voluntary retirement of the petitioner are wholly arbitrary and perverse. It is not in dispute

that the petitioner had given three months notice and if, the proposal of his voluntary retirement was not sent by the subordinate officer within time, how he could have been blamed for the same.

13. It is not the case of the respondents that the petitioner was not eligible for praying for voluntary retirement. The petitioner thereafter continued in the service and as he has to settle in America, he has vide his application dated 17.5.1989 Annexure-E on the record which is also not disputed again prayed for his voluntary retirement from 26.12.1988. This application has not been decided. The petitioner has nodoubt stopped to come to the duty, but thereafter he has from time to time reminded the respondents of this fact. But, even after the application of the petitioner, as usual the respondents have proceeded in the matter with wholly technical approach.

14. The petitioner has come up before this court. It is a different matter that this court has not accepted his prayer for grant of voluntary retirement with reference to his earlier application, but with reference to his application dated 5.12.1991 this court has given directions to the respondents to decide the same within three months. But, again redtapism prevailed and whatever come from the Babus pens has been accepted and in routine manner without any application of mind, more particularly without keeping in mind the judgment of this court given in the case of the petitioner, mechanically decision has been taken to reject that application on 7.2.1997. Grounds given for rejection of this application are wholly uncalled for, baseless and unwarranted. This application has been rejected on the ground that three months notice has not been given and this has been filed after more than two years of the petitioner's own date of retirement i.e. 17.5.1989. Technically speaking it is true the notice has not been given by the petitioner, but substance of the matter has to be considered and more so where in case such approach of the authorities ultimately may result in heavy monetary loss to the Government, they should have been very careful. Now what the petitioner wants and attempts to take benefit of this carelessness, casual and technical approach of the respondent No.2.

15. This court has meaning to give directions to the respondents for consideration of the application of the petitioner dated 5.12.1991 in his earlier Special Civil Application and same should have been taken in its correct perspective so that all past and future disputes

would have come to an end. None of the grounds on which the application of the petitioner for voluntary retirement could have been withheld is present in this case.

16. As to the notice period is concerned, it is for the benefit of the Government. But where the notice has not been given and particularly in the facts of this case where since 1988 the petitioner is praying for voluntary retirement, the same could have been accepted by waiving condition of notice or to take three months salary from the petitioner. That would have only been reasonable and proper approach in the interest of the exchequer of the State and prudent man approach and decision.

17. The petitioner has acted very fairly praying for his voluntary retirement from 17.5.1989 though has been prayed in the year 1991.

18. Taking into consideration the totality of the facts of this case, I have hesitation to say that the respondent No.2 has acted totally against the interest of the State. He has not taken positive and practical approach in the matter and felt satisfied by the technical approach which has resulted in two litigations before this court and now the petitioner is praying for reinstatement in the service.

19. In the result, this Special Civil Application is succeeds and the same is allowed and the order of the respondent No.2 dated 7.2.1997 Annexure-0 is quashed and set aside and the petitioner application dated 5.12.1991 for his voluntary retirement from the service w.e.f. 17.9.1989 is allowed and he is ordered to be voluntary retired from the service from 17.5.1989 subject to the condition first his absent period from 1.1.1987 to 15.7.1988 from the services shall be taken to be leave without pay, but this period shall be counted for qualifying service. The respondent No.2 is directed to deduct three months salary i.e. notice pay from the retiral benefits which are to be paid to the petitioner. The respondent No.2 is directed to sanction the pension of the petitioner taking into consideration his qualifying services from the date of his appointment to 17.5.1989. The petitioner is directed to submit necessary papers for sanction of pension after fulfilling all the formalities which are required to be completed from his side. The matter of sanction of pension of the petitioner should be finally decided by the respondent No.2 within a period of three months from the date of receipt of the writ of this order. Thereafter forthwith

the papers be sent to the Director of Pension and Provident Fund who in his turn will pay retiral benefits to the petitioner within two months next. The petitioner will give fullest cooperation to both the aforesaid officers who are to deal with sanction of the pension and the payment of the amount of pension and other retiral benefits. As a result of this order now nothing survives and requires to be done with the chargesheet now given to the petitioner and in fact now this chargesheet has to taken to have been dropped. Rule is made absolute in the aforesaid terms with no order as to costs.

(S.K.Keshote,J.)

(pathan)